

SETTLEMENT AGREEMENT CONCERNING
CARMEL CITY ORDINANCE NO. C-263

This Settlement Agreement ("Agreement") is made and entered into by and between: (1) The City of Carmel, Indiana, the Mayor of the City of Carmel, Indiana, and the City Council of the City of Carmel, Indiana (collectively the "City"); and (2) No Ordinance for Annexation ("NOAX") and its members (collectively, "NOAX") on this 6th day of September, 2005.

RECITALS

Whereas, the Carmel City Council published Annexation Ordinance No. C-263 ("Ordinance") on November 26, 2004;

Whereas, NOAX is an unincorporated association comprised of several hundred owners of land located in the area to be annexed pursuant to the Ordinance ("Annexation Area" or "Annexation Territory");

Whereas, NOAX is governed by a board made up of various homeowners association presidents and officers as well as other community leaders;

Whereas, NOAX and its board have organized and led the effort to oppose Ordinance C-263, which has resulted in the filing of a remonstrance which is pending in Hamilton Superior Court as Cause No. 29D03-0502-MI-188 (the "Remonstrance");

Whereas, the City and NOAX desire to settle their differences and disputes concerning the Remonstrance and the Ordinance in order to avoid the expense, burden, and inconvenience of litigation;

Whereas, by the execution of this Agreement by the City Mayor and by the majority of the members of the City Council, the City represents that this Agreement has been lawfully approved by the Mayor and the Council.

AGREEMENT

In consideration of the Recitals and terms set forth, the City and NOAX agree as follows:

1. **Passage and Adoption of an Amendment to the Ordinance.** The Carmel City Council shall pass and the City Mayor shall execute an amendment to the Ordinance (hereinafter the "Amendment"). The Amendment shall provide as follows:

- a. The Amendment shall be effective only upon satisfaction of the conditions set forth in Paragraph 3 herein.
- b. The effective date of the annexation shall be three years following the date of the order provided in Paragraph 3 herein.
- c. A tax abatement program for the Annexation Territory shall be established, whereby 75% of the property taxes for municipal purposes

shall be abated in the first year following the effective date of the annexation, 50% in the second year, and 25% in the third year.

- d. In the fiscal plan adopted by Carmel, Carmel has projected to invest \$40 million in road improvements in the Annexation Territory. Within ninety (90) days of the Effective Date of this Agreement or January 1, 2006, whichever is last to occur, Carmel shall initiate a process by which the existing Comprehensive and Thoroughfare Plan for the Annexation Territory will be made available for review and revision as necessary and advisable. Public meetings will be held in the Annexation Territory for input, prior to any changes being made to this plan. NOAX and Carmel understand and agree that until the annexation is effective, all improvements to roads and streets are subject to Hamilton County approval. Subject to any necessary Hamilton County approval, Carmel will commit up to \$40 million to the improvement of intersections and resurfacing of all roads in the Annexation Territory as needed to bring them up to the standards within the Carmel limits over a period of six years after the Effective Date of this Agreement. With the changes provided herein, it is no longer estimated that the entire \$40 million will be required for road improvements. Intersection improvements at 106th & Shelborne Road, 96th & Towne Rd, 106th & Springmill Road, and 96th & Springmill Road, will take priority over all other projects, with the first intersection improvement being initiated within 90 days of the Effective Date of this agreement. For purposes of this paragraph, initiation of the improvement shall commence with the preparation of engineering plans and not the commencement of actual construction. These intersection improvements shall be coordinated pursuant to a traffic management plan that is reasonable and consistent with good engineering practice so that traffic will properly flow through the Annexation Territory while the improvements are being completed. **No decision to build or expand any road in the Annexation Territory other than Illinois Street or Commerce Drive from its current size or character will be made prior to January, 2012, which is when those persons elected at the first municipal election when registered voters in the Annexation Territory are permitted to vote will assume office. This last sentence: (1) shall not prohibit Carmel from accepting roads that are dedicated to Carmel by a developer; and (2) shall not apply to the addition of a turning lane which may be required by the City of Carmel with respect to a new development or new construction**

- e. "Collector Roads" for purposes of this Agreement shall mean in the Annexation Territory: Springmill Road, Ditch Road, Shelborne Road, Towne Road (all of the previous north-south roads from the southern edge of 116th Street right-of-way to the southern edge of the 96th Street right-of-way), 96th Street, and 106th Street. As a main feature of Collector Road improvements, Carmel will install bicycle paths on both sides of Collector

Roads in the Annexation Territory, depending upon topography and the amount of available right-of-way.

- f. A homeowners' association (that is recognized as a tax exempt organization under Section 528(c) of the Internal Revenue Code) in the Annexation Territory may request that Carmel vacate the streets in its subdivision, and Carmel will vacate such streets a single time. For those subdivisions in the Annexation Territory that do not have such a homeowner's association, the request may be made by petition of a majority of the homeowners in the subdivision.
- g. Street lights at Towne Road intersections 106th and 116th, and Ditch Road intersections 116th and 96th, shall be replaced with lights similar to those at the roundabout at 136th and Springmill Road.
- h. Carmel will redistrict its council districts prior to the first municipal election following the effective date of the annexation, and in so doing, the territory bounded by US 31 to the East, 116th Street to the North, the Boone County line to the West and 96th Street to the South, will not be divided (although it may be included with other territory as a part of a larger district).
- i. It is Carmel's intention that until the review and revision as necessary and advisable of the Comprehensive and Thoroughfare Plan is completed, no changes should be made in the Annexation Territory that will create a housing density of greater than one unit per acre and that no changes in the zoning district for property in the Annexation Territory outside of the commercial corridor along the Michigan Road district (collectively "Zoning Changes") should be made. It is further Carmel's objective that, prior to the assumption of office by the officers elected at the first municipal elections where voters in the Annexation Territory are permitted to vote, Zoning Changes in the Annexation Territory should not be permitted. Carmel will fulfill its legal obligation to give due consideration to any properly submitted request for a Zoning Change, but Carmel also recognizes that Zoning Changes in the Annexation Territory would, in general, not be in the public interest prior to the time when the review and revision of the Comprehensive and Thoroughfare Plan has been completed and voters in the Annexation Territory have representation on the Council.
- j. Commensurate with the expiration of term of the current member of the Carmel Plan Commission appointed by the Mayor whose term expires first, the Mayor will appoint to the Carmel Plan Commission one member who resides in the Annexation Territory. A resident of the Annexation Territory shall continue to serve on the Plan Commission at least until the election of a council member from the new district incorporating the Annexation Territory.

- k. Carmel will develop a master drainage plan within 2 years of the Effective Date of this Agreement to address and correct drainage problems in all of the Annexation Territory.
- l. Carmel will cause engineering plans to be drawn and complete construction and implementation thereof for the drainage issues in Larkspur, Walnut Creek, Kings Mill, Bridleborne, Windemere, Crooked Stick, and Crooked Stick West within five (5) years of the Effective Date of this Agreement, and within 7 years for the remainder of the Annexation Territory. The cost of these improvements shall be funded with the funds allocated to road improvements in Carmel's fiscal plan that are not needed for the road improvements provided in Subparagraph (d) herein.
- m. It is Carmel's practice and desire to bury electric service and other overhead lines wherever possible throughout the existing City limits. Carmel will work diligently with the electric service provider to bury power lines in the Annexation Territory where practical, affordable and feasible, recognizing that the decision to bury such lines lies ultimately outside Carmel's control. To the extent practical, affordable and feasible, Carmel may dedicate some of the funds that would otherwise have been dedicated to road improvements under the fiscal plan to the burying of such lines.
- n. All other provisions of the Ordinance and the fiscal plan for the Annexation Territory shall remain the same except as to the extent expressly modified herein, particularly with respect to roads (Subparagraphs d., l., and m. herein).

2. **City's Payment for NOAX's Reasonable Costs and Attorneys' Fees.** The City shall reimburse NOAX for the actual costs and attorneys' fees it incurred related to this matter and the settlement reached by the parties, not to exceed \$50,000.00. Said payment will be made within 60 days after the Court's ruling in Paragraph 3.

3. **Conditions.** The Amendment in Paragraph 1 shall not take effect unless and until the Court hearing the Remonstrance issues a final order no longer subject to appeal affirming the Ordinance as amended by the Amendment and approves the terms of this Settlement. If this condition is not satisfied, then the amendment detailed in Paragraph 1 herein shall be of no effect, the stipulation provided in Paragraph 4 herein shall be vacated, Carmel shall not be obligated to reimburse NOAX's fees pursuant to Paragraph 2 herein, and the parties shall be returned to their respective positions in the Remonstrance prior to entering this Settlement Agreement. The Effective Date of this Agreement shall be the date that the Conditions in this Paragraph have been satisfied.

4. **Stipulation.** Subject to the conditions in Paragraph 3, Carmel and counsel for the remonstrators in the Remonstrance on behalf of NOAX shall submit the Amendment to the Court in the Remonstrance; and NOAX, its counsel, and its members shall not contest the following,

even if landowners in the Annexation Territory appear at the Remonstrance hearing to contest the Annexation:

- a. Sixty (60) percent of the Annexation Territory is subdivided;
- b. The Annexation Territory is contiguous to the Carmel corporate limits;
- c. Carmel's fiscal plan as amended herein for the Annexation Territory satisfies the requirements of Ind. Code § 36-4-3-13(d);
- d. Ordinance No. C-263 as amended is in the best interest of owners of land in the Annexation Territory; and
- e. Fewer than 65% of owners of land in the Annexation Territory and the owners of less than 75% of assessed valuation in the Annexation Territory are opposed to the annexation under Ordinance No. C-263 as amended.

In the absence of opposition presented by some other landowner or landowners from the Annexation Territory at the Remonstrance hearing, NOAX and Carmel shall also stipulate to these above matters.

5. **Breach; Enforcement of Remedies.** It is understood by the City and NOAX that each party shall have the right to institute and prosecute any proceeding, at law or in equity, against any other party hereto for violating or threatening to violate any obligation contained in this Agreement, which right shall include the right to seek and obtain in any court of competent jurisdiction an injunction to restrain a violation or alleged violation as well as the right to damages at law. Any party violating any obligation to this Agreement agrees to indemnify and hold harmless the other party against and from any and all liability, loss, or damage arising from such breach, including any and all legal costs, charges, and attorneys' fees reasonably incurred in enforcing such obligation.

6. **Acknowledgement of Parties.** Each party hereto acknowledges, covenants, and agrees that it has read this Agreement, that it understands its terms including the legal consequences thereof, and that in offering to make, and in making, executing and delivering this Agreement, it was not acting under any duress, undue influence, misapprehension, or misrepresentation by any party hereto, or any agent, attorney or other representative of any party and that this Agreement was made, executed, and delivered as a free and voluntary act.

7. **Entire Agreement; Reliance, Binding Effect.** This Agreement represents a complete and total integration of the agreement of the parties hereto and supersedes all prior or contemporaneous written or oral agreements relating to this subject matter. The parties hereto agree that any and all prior agreements covering the subject matter of this Agreement are hereby terminated and are of no further force or effect. The parties hereto intend that each of the representations is made for the purpose of inducing each other to execute this Agreement, that each of the representations is true, and the parties hereto expressly authorize each other to rely upon such representations and acknowledge that such representations have in fact been relied upon by each party. All of the obligations contained in this Agreement shall be binding upon the parties hereto, and their respective successors, assigns, or other representatives.

8. Authority and Representations.

a The undersigned persons executing this Agreement on behalf of the parties hereto each represent that he/she is fully empowered to execute this Agreement in the capacity shown below and that all necessary action for the making of this Agreement has been taken and done. It is understood by both parties that empowerment of the signatories for NOAX must be granted such empowerment by the receipt of signatures set forth in Paragraph 8.b.3. responding to the request for empowerment by NOAX.

b NOAX Representations:

By executing this Settlement Agreement, the officers of NOAX represent the following:

1. The officers of NOAX have executed this Agreement, pursuant solely to the authority granted to them by vote of the Executive Board of NOAX. Such execution does not represent any grant of authority from the collective Remonstrating Petitioners in the action which is pending in Hamilton Superior Court as Cause No. 29D03-0502-MI-188.
2. The officers of NOAX agree to use their efforts, for a period of ninety (90) days from the execution of this Agreement, to seek the approval of this Agreement by the remonstrating petitioners and other owners of land in the Southwest Clay Annexation Area.
3. The officers of NOAX agree to submit this Agreement to the Court for its approval at the end of the ninety (90) day period if the officers of NOAX have obtained the signatures from 50% plus 1 (one) (a simple majority) of landowners in the Annexation Territory who have returned a ballot in that time that indicates their desire to accept this Agreement and to not oppose the annexation pursuant to Ordinance C-263 as amended pursuant to the Amendment.

c Carmel Representations:

By executing this Settlement Agreement, Carmel represents the following:

1. Carmel will be bound by the terms of this Settlement Agreement and may not revoke its consent to this Settlement Agreement unless, within ninety (90) days after the date of execution hereof, the officers of NOAX refuse to submit this Settlement Agreement to the Hamilton Superior for its approval. The parties specifically recognize that a decision in the action entitled *Certain Home Place Territory Landowners v City of Carmel, Indiana*, Hamilton Superior Court, Cause No. 29D03-0502-MI-169 may impact the issues in the action between the parties, but the Agreement of the parties entered into herein shall not be impacted and does not constitute a basis for either party to breach the terms of this Agreement.
2. Carmel agrees that it will defend and indemnify the officers of NOAX (identified on Attachment A hereto) against any claim or loss, in the event that any of the remonstrating petitioners or other land owners in the Southwest Clay Annexation Territory institutes a personal legal action against those officers by reason of the officers' pursuit of this Agreement.

9. **Fire Contract.** During the three year period under which annexation is delayed pursuant to the Amendment, Carmel agrees that it will not change either the methodology of computing Clay Township's allocation of costs in the Contract for Fire Protection Between Carmel and Clay Township (the "Fire Contract") or the types of costs which are allocated to fire service for purposes of the Fire Contract.

10. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and each subsequent counterpart shall together constitute but one in the same instrument.

11. **Miscellaneous.** The parties agree to never contest the validity or enforceability of this Agreement's provisions. This Agreement and its terms shall be interpreted under the laws of the State of Indiana. When applicable, use of the singular form of any word shall mean or apply to the plural, and the neuter form shall mean or apply to the feminine or masculine. The captions and headings appearing in this Agreement are inserted only as a matter of convenience and are not intended to define, limit, construe, or describe the scope or intent of such provisions. Time is of the essence regarding this Agreement.

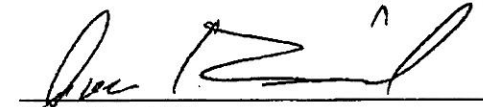
12. **Non-Waiver of Rights.** No failure by any party hereto to enforce, on one or more occasions, any term or provision hereof shall be effective unless in writing, nor operate as a later waiver of any right or remedy.

13. **Modification.** No change or modification of this Agreement shall be valid unless the same is in writing and duly executed by all the parties hereto, or their duly authorized successors and assigns.

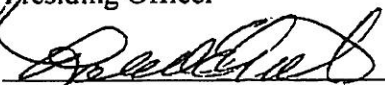
14. **Severability.** The invalidity of any provision(s) contained in this Agreement shall not operate to cause any remaining provisions to be deemed invalid, *provided that*, the terms and obligations of the parties and the Agreement itself still reflect the parties' intent.

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and date first written above.

CITY OF CARMEL



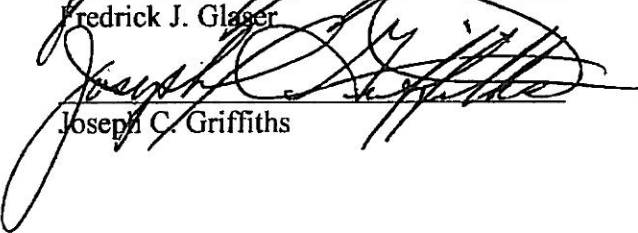
Presiding Officer




Ronald E. Carter, President Pro Tempore



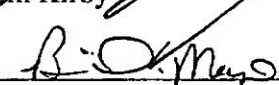
Fredrick J. Glaser



Joseph C. Griffiths



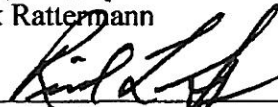
Kevin Kirby




Brian D. Mayo



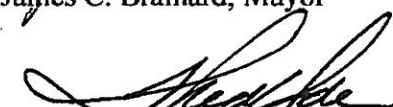
Mark Rattermann



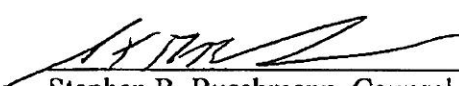
Richard L. Sharp



James C. Brainard, Mayor



No Ordinance for Annexation d/b/a NOAX
An Unincorporated Association of Property
Owners in the Annexation Territory
By:



Stephen R. Buschmann, Counsel for NOAX

Prepared by: Nicholas K. Kile
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204
INDS01 NKK 744405v7

ATTACHMENT A

NOAX officers:

President: Fred Yde

Chief of Staff (VP): Dave Small

Treasurer: Bob Kaspar

Secretary: Carol Schleif